

**ALCOHOLIC BEVERAGE CONTROL ACT -
MODIFICATIONS**

2011 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies the Alcoholic Beverage Control Act to correct omissions or errors made as part of the recodification of that act.

Highlighted Provisions:

This bill:

- ▶ reorders language;
- ▶ corrects or clarifies terminology;
- ▶ clarifies a formula related to the Alcoholic Beverage Enforcement and Treatment Restricted Account;
- ▶ clarifies references to specific licenses or sublicenses;
- ▶ relocates a provision addressing advertising;
- ▶ makes the provision related to a package agency posting a bond more consistent with other bond requirements in the act; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

32B-1-203 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276

32B-1-306 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276

32B-2-402 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276 and amended by Laws of Utah 2010, Chapter 276, Coordination Clause

32B-2-404 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276

32 **32B-2-604 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

33 **32B-3-303 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

34 **32B-3-307 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

35 **32B-4-422 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

36 **32B-4-507 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

37 **32B-5-303 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

38 **32B-5-308 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

39 **32B-6-205 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

40 **32B-6-305 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

41 **32B-6-405 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

42 **32B-9-302 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276

43 RENUMBERS AND AMENDS:

44 **32B-1-206**, (Renumbered from 32B-4-510 (Effective 07/01/11), as enacted by Laws of
45 Utah 2010, Chapter 276)

46

47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **32B-1-203 (Effective 07/01/11)** is amended to read:

49 **32B-1-203 (Effective 07/01/11). Licensee compliance with other laws.**

50 (1) A licensee and a person applying for a license shall comply with the applicable
51 federal and state laws pertaining to payment of taxes and contributions to unemployment and
52 insurance funds to which the licensee or person may be subject.

53 (2) The commission:

54 (a) may not issue a license to a person who violates this section; and

55 (b) may ~~[not renew,]~~ suspend, ~~[or]~~ revoke, or not renew the license of a licensee who
56 violates this section.

57 Section 2. Section **32B-1-206**, which is renumbered from Section 32B-4-510 (Effective
58 07/01/11) is renumbered and amended to read:

59 ~~[32B-4-510 (Effective 07/01/11)].~~ **32B-1-206. Advertising prohibited --**
60 **Exceptions.**

61 (1) (a) The department may not advertise liquor, except:

62 (i) the department may provide for an appropriate sign in the window or on the front of

a state store or package agency denoting that it is a state authorized liquor retail facility;

(ii) the department or a package agency may provide a printed price [~~lists~~] list to the public;

(iii) the department may authorize the use of price posting and floor stacking of liquor within a state store;

(iv) subject to Subsection (1)(b), the department may provide a listing of the address and telephone number of a state store in one or more printed or electronic directories available to the general public; and

(v) subject to Subsection (1)(b), a package agency may provide a listing of its address and telephone number in one or more printed or electronic directories available to the general public.

(b) A listing under Subsection (1)(a)(iv) or (v) in the business or yellow pages of a telephone directory may not be displayed in an advertisement or other promotional format.

(2) (a) The department may not advertise an alcoholic product on a billboard.

(b) A package agency may not advertise an alcoholic product on a billboard, except to the extent allowed by the commission by rule.

(3) (a) The department may not display liquor or a price [~~lists~~] list in a window or showcase visible to passersby.

(b) A package agency may not display liquor or a price [~~lists~~] list in a window or showcase visible to passersby, except to the extent allowed by the commission by rule.

(4) Except to the extent prohibited by this title, the advertising of an alcoholic product is allowed under guidelines established by the commission by rule.

(5) The advertising or use of any means or media to offer an alcoholic product to the general public without charge is prohibited.

Section 3. Section **32B-1-306 (Effective 07/01/11)** is amended to read:

32B-1-306 (Effective 07/01/11). Use of information from a criminal background check.

The commission or department may use information obtained pursuant to Section 32B-1-305 only for one or more of the following purposes:

(1) enforcing this title;

(2) determining whether an individual is convicted of any of the following offenses

that disqualify the individual under this title from acting in a capacity described in Subsection 32B-1-305(2):

- (a) a felony under federal law or state law;
- (b) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;
- (c) a crime involving moral turpitude; or
- (d) on two or more occasions within the previous five years, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs;
- (3) determining whether an individual fails to accurately disclose the ~~[person's]~~ individual's criminal history on an application or document filed with the department or commission;
- (4) approving or denying an application for employment with the department;
- (5) taking disciplinary action against a department employee, including possible termination of employment;
- (6) issuing or denying an application to operate a package agency;
- (7) issuing or denying an application for a license;
- (8) issuing or denying the renewal of a package agency agreement;
- (9) issuing or denying the renewal of a license;
- (10) suspending the operation of a package agency;
- (11) terminating a package agency contract; or
- (12) suspending or revoking a license.

Section 4. Section **32B-2-402 (Effective 07/01/11)** is amended to read:

32B-2-402 (Effective 07/01/11). Definitions -- Calculations.

(1) As used in this part:

(a) "Account" means the Alcoholic Beverage Enforcement and Treatment Restricted Account created in Section 32B-2-403.

(b) "Advisory council" means the Utah Substance Abuse Advisory Council created in Section 63M-7-301.

(c) "Alcohol-related offense" means:

(i) a violation of:

- 125 (A) Section 41-6a-502; or
- 126 (B) an ordinance that complies with the requirements of:
- 127 (I) Subsection 41-6a-510(1); or
- 128 (II) Section 76-5-207; or
- 129 (ii) an offense involving the illegal:
- 130 (A) sale of an alcoholic product;
- 131 (B) consumption of an alcoholic product;
- 132 (C) distribution of an alcoholic product;
- 133 (D) transportation of an alcoholic product; or
- 134 (E) possession of an alcoholic product.
- 135 (d) "Annual conviction time period" means the time period that:
- 136 (i) begins on July 1 and ends on June 30; and
- 137 (ii) immediately precedes the fiscal year for which an appropriation under this part is
- 138 made.
- 139 (e) "Municipality" means:
- 140 (i) a city; or
- 141 (ii) a town.
- 142 (2) For purposes of ~~[this part]~~ Subsection 32B-2-404(1)(b)(iii), the number of ~~[state~~
- 143 ~~stores, package agencies, and retail licensees]~~ premises located within the limits of a
- 144 municipality or county:
- 145 (a) is the number determined by the department to be so located;
- 146 (b) includes the aggregate number of premises of the following:
- 147 (i) a state store;
- 148 (ii) a package agency; and
- 149 (iii) a retail licensee~~[-except for an on-premise beer retailer]~~; and
- 150 (c) for a county, consists only of the number located within an unincorporated area of
- 151 the county.
- 152 (3) The department shall determine:
- 153 (a) a population figure according to the most current population estimate prepared by
- 154 the Utah Population Estimates Committee;
- 155 (b) a county's population for the 25% distribution to municipalities and counties under

Subsection 32B-2-404(1)(b)(i) only with reference to the population in the unincorporated areas of the county; and

(c) a county's population for the 25% distribution to counties under Subsection 32B-2-404(1)(b)(iv) only with reference to the total population in the county, including that of a municipality.

(4) (a) A conviction occurs in the municipality or county that actually prosecutes the offense to judgment.

(b) If a conviction is based upon a guilty plea, the conviction is considered to occur in the municipality or county that, except for the guilty plea, would have prosecuted the offense.

Section 5. Section **32B-2-404 (Effective 07/01/11)** is amended to read:

32B-2-404 (Effective 07/01/11). Alcoholic Beverage Enforcement and Treatment Restricted Account distribution.

(1) (a) The money deposited into the account under Section 32B-2-403 shall be distributed to municipalities and counties:

(i) to the extent appropriated by the Legislature, except that the Legislature shall appropriate each fiscal year an amount equal to at least the amount deposited in the account in accordance with Section 59-15-109; and

(ii) as provided in this Subsection (1).

(b) The amount appropriated from the account shall be distributed as follows:

(i) 25% to municipalities and counties on the basis of the percentage of the state population residing in each municipality and county;

(ii) 30% to municipalities and counties on the basis of each municipality's and county's percentage of the statewide convictions for all alcohol-related offenses;

(iii) 20% to municipalities and counties on the basis of the percentage of the ~~[state stores, package agencies, liquor licensees, and beer licensees]~~ following in the state that are located in each municipality and county~~[; and]~~:

(A) state stores;

(B) package agencies;

(C) retail licensees; and

(D) off-premise beer retailers; and

(iv) 25% to the counties for confinement and treatment purposes authorized by this part

on the basis of the percentage of the state population located in each county.

(c) (i) Except as provided in Subsection (1)(c)(ii), if a municipality does not have a law enforcement agency:

(A) the municipality may not receive money under this part; and

(B) the State Tax Commission:

(I) may not distribute the money the municipality would receive but for the municipality not having a law enforcement agency to that municipality; and

(II) shall distribute the money that the municipality would have received but for it not having a law enforcement agency to the county in which the municipality is located for use by the county in accordance with this part.

(ii) If the advisory council finds that a municipality described in Subsection (1)(c)(i) demonstrates that the municipality can use the money that the municipality is otherwise eligible to receive in accordance with this part, the advisory council may direct the State Tax Commission to distribute the money to the municipality.

(2) To determine the distribution required by Subsection (1)(b)(ii), the State Tax Commission shall annually:

(a) for an annual conviction time period:

(i) multiply by two the total number of convictions in the state obtained during the annual conviction time period for violation of:

(A) Section 41-6a-502; or

(B) an ordinance that complies with the requirements of Subsection 41-6a-510(1) or Section 76-5-207; and

(ii) add to the number calculated under Subsection (2)(a)(i) the number of convictions obtained during the annual conviction time period for the alcohol-related offenses other than the alcohol-related offenses described in Subsection (2)(a)(i);

(b) divide an amount equal to 30% of the appropriation for that fiscal year by the sum obtained in Subsection (2)(a); and

(c) multiply the amount calculated under Subsection (2)(b), by the number of convictions obtained in each municipality and county during the annual conviction time period for alcohol-related offenses.

(3) By not later than September 1 each year:

(a) the state court administrator shall certify to the State Tax Commission the number of convictions obtained for alcohol-related offenses in each municipality or county in the state during the annual conviction time period; and

(b) the advisory council shall notify the State Tax Commission of any municipality that does not have a law enforcement agency.

(4) By not later than December 1 of each year, the advisory council shall notify the State Tax Commission for the fiscal year of appropriation of:

(a) a municipality that may receive a distribution under Subsection (1)(c)(ii);

(b) a county that may receive a distribution allocated to a municipality described in Subsection (1)(c)(i);

(c) a municipality or county that may not receive a distribution because the advisory council has suspended the payment under Subsection 32B-2-405(2)(a); and

(d) a municipality or county that receives a distribution because the suspension of payment has been cancelled under Subsection 32B-2-405(2).

(5) (a) By not later than January 1 of the fiscal year of appropriation, the State Tax Commission shall annually distribute to each municipality and county the portion of the appropriation that the municipality or county is eligible to receive under this part, except for any municipality or county that the advisory council notifies the State Tax Commission in accordance with Subsection (4) may not receive a distribution in that fiscal year.

(b) (i) The State Tax Commission shall prepare forms for use by a municipality or county in applying for a distribution under this part.

(ii) A form described in this Subsection (5) may require the submission of information the State Tax Commission considers necessary to enable the State Tax Commission to comply with this part.

Section 6. Section **32B-2-604 (Effective 07/01/11)** is amended to read:

32B-2-604 (Effective 07/01/11). Bond related to package agency.

(1) (a) A package agent who has a consignment liquor inventory owned by the state shall post a consignment surety bond payable to the department in the amount of the consignment inventory.

(b) A consignment surety bond shall be conditioned upon a package agent's return of the unsold consignment liquor inventory at the termination of a package agency agreement.

(2) (a) A package agent that owns the package agency's liquor inventory shall post a cash bond or surety bond:

(i) in the penal amount fixed by the department, except that the penal amount shall be at least \$1,000; and

(ii) payable to the department.

(3) A package agent shall procure and maintain the bond required under this section for as long as the package agent continues to operate as a package agent.

(4) A bond required under this section shall be:

(a) in a form approved by the attorney general; and

(b) conditioned upon the package agent's faithful compliance with this title, the rules of the commission, and the package agency agreement.

(5) (a) If a surety bond posted by a package agency under this section is canceled due to the package agent's or package agency's negligence, the department may assess a \$300 reinstatement fee.

(b) No part of a bond posted by a package agent under this section may be withdrawn:

(i) during the period the package agency is in effect; or

(ii) while a revocation of the package agency is pending against the package agent.

(6) (a) A bond posted under this section by a package agent may be forfeited if the package agency is revoked.

(b) Notwithstanding Subsection (6)(a), the department may make a claim against a bond posted by a package agent for money owed the department under this title without the commission first revoking the package agency.

Section 7. Section **32B-3-303 (Effective 07/01/11)** is amended to read:

32B-3-303 (Effective 07/01/11). Acts making a person subject to this part.

(1) One or more of the following acts constitute a nuisance activity:

(a) a single felony conviction within the last two years of:

(i) a retail licensee; or

(ii) supervisory or managerial level staff of the retail licensee;

(b) a single conviction under Title 58, Chapter 37, Utah Controlled Substances Act:

(i) (A) of a retail licensee; or

(B) staff of the retail licensee;

280 (ii) within the last two years; and
281 (iii) made on the basis of an act that occurs on the licensed premises;
282 (c) three or more convictions of patrons of a retail licensee under Title 58, Chapter 37,
283 Utah Controlled Substances Act, if:
284 (i) the convictions are made on the basis of an act that occurs on the licensed premises;
285 and
286 (ii) there is evidence that the retail licensee knew or should have known of the illegal
287 activity;
288 (d) a single conviction within the last two years of a retail licensee or staff of the retail
289 licensee that is made on the basis of:
290 (i) pornographic and harmful materials:
291 (A) that violate Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and
292 Performances; and
293 (B) if the violation occurs on the licensed premises;
294 (ii) prostitution;
295 (iii) engaging in or permitting gambling, as defined and proscribed in Title 76, Chapter
296 10, Part 11, Gambling, on the licensed premises;
297 (iv) having any video gaming device, as defined and proscribed by Title 76, Chapter
298 10, Part 11, Gambling, on the licensed premises;
299 (v) on the licensed premises engaging in or permitting a contest, game, gaming
300 scheme, or gaming device that requires the risking of something of value for a return or for an
301 outcome when the return or outcome is based upon an element of chance, excluding the playing
302 of an amusement device that confers only an immediate and unrecorded right of replay not
303 exchangeable for value;
304 (vi) a disturbance of the peace that occurs on the licensed premises; or
305 (vii) disorderly conduct that occurs on the licensed premises; or
306 (e) three or more adjudicated violations of this title within the last two years by a retail
307 licensee or by staff of the retail licensee that result in a criminal citation or an administrative
308 referral to the department relating to:
309 (i) the sale, offer for sale, or furnishing of [~~alcohol~~] an alcoholic product to a minor;
310 (ii) the sale, offer for sale, or furnishing of [~~alcohol~~] an alcoholic product to a person

311 actually, apparently, or obviously intoxicated;

312 (iii) the sale, offer for sale, or furnishing of [~~alcohol~~] an alcoholic product after the

313 lawful hours for the sale or furnishing; or

314 (iv) acts or conduct on the licensed premises contrary to the public welfare and morals

315 involving lewd acts or lewd entertainment prohibited by this title.

316 (2) For purposes of Subsection (1), in the case of a retail licensee that is a partnership,

317 corporation, or limited liability company, a conviction under Subsection (1)(c) includes a

318 conviction of any of the following for an offense described in Subsection (1)(c):

319 (a) a partner;

320 (b) a managing agent;

321 (c) a manager;

322 (d) an officer;

323 (e) a director;

324 (f) a stockholder who holds at least 20% of the total issued and outstanding stock of a

325 corporate retail licensee; or

326 (g) a member who owns at least 20% of a limited liability company retail licensee.

327 Section 8. Section **32B-3-307 (Effective 07/01/11)** is amended to read:

328 **32B-3-307 (Effective 07/01/11). Hearing on formal objections to renewal.**

329 (1) Upon receipt of a formal objection that meets the requirements of Section

330 32B-3-306, the department shall:

331 (a) issue a notice of agency action; and

332 (b) serve on the retail licensee no later than 30 days before the expiration of the retail

333 licensee's license:

334 (i) the notice of agency action; and

335 (ii) a copy of the formal objection.

336 (2) (a) A retail licensee against whom a notice of agency action is served under

337 Subsection (1) may request a hearing.

338 (b) The request for hearing described in Subsection (2)(a) shall be:

339 (i) in writing; and

340 (ii) filed with the commission within 10 days of the day on which the notice of agency

341 action is served on the retail licensee.

(c) If a retail licensee fails to file a request for hearing in accordance with this Subsection (2), the commission may not renew the license of the retail licensee.

(3) (a) Upon receipt of a request for hearing meeting the requirements of Subsection (2), the department shall immediately schedule a hearing that shall be:

(i) held no later than 10 days before the expiration date of the retail licensee's license;

and

(ii) electronically recorded by the department.

(b) The retail licensee or an objecting governmental entity, at its own expense, may have a reporter approved by the department prepare a transcript from the department's record of the hearing.

(c) (i) The department shall present information at the hearing that supports a finding that a nuisance activity occurred.

(ii) The information described in Subsection (3)(c)(i) shall be made a part of the record of the hearing.

(d) A retail licensee shall:

(i) have the opportunity to challenge or explain whether any of the nuisance activity that forms the basis for the formal objection occurred; and

(ii) be permitted to:

(A) testify;

(B) present evidence; and

(C) comment on the issues at the hearing.

(4) (a) A hearing held under this ~~chapter~~ part shall be conducted under the authority of the commission.

(b) The commission is responsible for rendering a final order on whether a retail licensee's license shall be renewed.

(c) Notwithstanding Subsections (4)(a) and (b), the commission may appoint a necessary hearing examiner to administer the hearing process.

(d) The commission or the hearing examiner appointed by the commission shall serve as the presiding officer at a hearing held under this section.

(e) The presiding officer at a hearing held under this section:

(i) shall evaluate:

- 373 (A) the information presented at the hearing in support of the formal objection; and
374 (B) any explanation and evidence offered by the retail licensee; and
375 (ii) may consider such factors as:
376 (A) the length of time the retail licensee has operated the licensed premises;
377 (B) the condition of the licensed premises;
378 (C) whether the retail licensee knew or should have known of the nuisance activity in
379 question;
380 (D) whether the retail licensee failed to:
381 (I) make a substantial effort to correct the nuisance activity; and
382 (II) work with law enforcement to curtail the nuisance activity;
383 (E) whether the nuisance activity has been ongoing or temporary;
384 (F) whether the retail licensee or the retail licensee's staff:
385 (I) initiated contact with the law enforcement agency on the nuisance activity; and
386 (II) cooperated with the law enforcement agency's investigation; and
387 (G) whether prior efforts to stop the nuisance activity by the community or the retail
388 licensee have been unsuccessful.
- 389 (5) An order issued under this section shall:
390 (a) be based on the evidence presented at the hearing; and
391 (b) state whether:
392 (i) the continued operation of the licensed premises will endanger the public health,
393 peace, safety, welfare, or morals of the community; and
394 (ii) the retail license should or should not be renewed.
- 395 (6) (a) If the presiding officer is a hearing examiner appointed by the commission, the
396 hearing officer shall issue a signed order in writing that:
397 (i) complies with Subsection (5);
398 (ii) recommends to the commission whether the retail license should or should not be
399 renewed;
400 (iii) states the reasons for the hearing officer's decision; and
401 (iv) notifies the retail licensee and the objecting governmental entity that the hearing
402 examiner's order will be considered by the commission at the next regularly scheduled meeting
403 of the commission.

(b) The department shall promptly mail a copy of the hearing examiner's order to:

(i) the retail licensee; and

(ii) any objecting governmental entity.

(c) The commission at its next regularly scheduled meeting after receipt of a hearing examiner's order, shall decide whether to renew or not renew the retail license on the basis of:

(i) the record and evidence presented at the hearing; and

(ii) the hearing examiner's recommendation.

(7) (a) As an alternative to ordering that a retail license not be renewed under this section, the commission may conditionally renew a retail license by requiring that:

(i) the retail licensee and the licensed premises be closely monitored during the licensing year by:

(A) the department;

(B) local government officials; and

(C) law enforcement; and

(ii) the matter be reviewed before the next renewal period.

(b) The commission may conditionally renew a retail license contingent on a person listed in Subsection (7)(b)(ii) divesting all interest in the retail licensed business if:

(i) the retail licensee is a partnership, corporation, or limited liability company; and

(ii) the formal objection filed under this section if filed solely on the basis of a felony conviction:

(A) of:

(I) a partner;

(II) a managing agent;

(III) a manager;

(IV) an officer;

(V) a director;

(VI) a stockholder who holds at least 20% of the total issued and outstanding stock of a corporate licensee; or

(VII) a member who owns at least 20% of a limited liability company licensee; and

(B) for illegal activity that occurred off of the licensed premises.

(8) (a) In accordance with this section, the commission shall issue a written order

setting forth the commission's decision and the reason for the commission's decision.

(b) The order described in Subsection (8)(a) is considered final on the date the order becomes effective.

(c) The department shall serve a copy of the order on the retail licensee.

(9) A retail licensee whose retail license is not renewed by order of the commission may seek judicial review under the procedures provided in Section 32B-3-207.

(10) A retail licensee whose retail license is not renewed may not reapply for a license under this title for three years from the date the retail license is not renewed.

Section 9. Section **32B-4-422 (Effective 07/01/11)** is amended to read:

32B-4-422 (Effective 07/01/11). Unlawful dispensing.

(1) For purposes of this section:

(a) "Primary spirituous liquor" means the main distilled spirit in a beverage.

(b) "Primary spirituous liquor" does not include a secondary alcoholic product used as a flavoring in conjunction with the primary distilled spirit in a beverage.

(2) A retail licensee licensed under this title to sell, offer for sale, or furnish spirituous liquor for consumption on the licensed premises, or staff of the retail licensee may not:

(a) sell, offer for sale, or furnish a primary spirituous liquor to a person on the licensed premises except in a quantity that does not exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department;

(b) sell, offer for sale, or furnish more than a total of 2.5 ounces of spirituous liquor per beverage;

(c) allow a person on the licensed premises to have more than a total of 2.5 ounces of spirituous liquor at a time; or

(d) (i) except as provided in Subsection (2)(d)(ii), allow a person to have more than two spirituous liquor beverages at a time; or

(ii) allow a person on the premises of the following to have more than one spirituous liquor beverage at a time:

(A) a full-service restaurant licensee;

(B) a person operating under a full-service restaurant sublicense;

(C) an on-premise banquet licensee;

(D) a person operating under an on-premise banquet [~~license~~] sublicense; or

(E) a single event permittee.

(3) A violation of this section is a class C misdemeanor.

Section 10. Section **32B-4-507 (Effective 07/01/11)** is amended to read:

32B-4-507 (Effective 07/01/11). Interfering with manufacturer, supplier, or importer.

(1) Except as provided in Subsection (2), a commissioner, the director, or a department employee may not directly or indirectly participate in any manner, by recommendation or otherwise, in the appointment, employment, or termination of appointment or employment of staff by:

(a) a manufacturer of liquor;

(b) a supplier of liquor to the department; or

(c) an importer of liquor to the department.

(2) A person described in Subsection (1) may participate in the appointment, employment, or termination of appointment or employment to:

(a) determine qualifications for licensing in accordance with Chapter 11, Manufacturing and Related Licenses Act; or

(b) enforce compliance with this title.

Section 11. Section **32B-5-303 (Effective 07/01/11)** is amended to read:

32B-5-303 (Effective 07/01/11). Purchase and storage of an alcoholic product by a retail licensee.

(1) (a) A retail licensee may not purchase liquor except from a state store or package agency.

(b) A retail licensee may transport liquor purchased from a state store or package agency from the place of purchase to the licensed premises.

(c) A retail licensee shall pay for liquor in accordance with rules established by the commission.

(2) (a) (i) A ~~[beer retailer]~~ retail licensee may not purchase, acquire, possess for the purpose of resale, or sell beer except beer that the ~~[beer retailer]~~ retail licensee purchases from:

(A) a beer wholesaler licensee; or

(B) a small brewer that manufactures the beer.

(ii) Violation of this Subsection (2)(a) is a class A misdemeanor.

(b) (i) If a ~~[beer retailer]~~ retail licensee purchases beer under Subsection (2)(a) from a beer wholesaler licensee, the ~~[beer retailer]~~ retail licensee shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the ~~[beer retailer]~~ retail licensee is located, unless an alternate wholesaler is authorized by the department to sell to the ~~[beer retailer]~~ retail licensee as provided in Section 32B-13-301.

(ii) Violation of Subsection (2)(b) is a class B misdemeanor.

(3) A retail licensee may not store, sell, offer for sale, or furnish an alcoholic product in a place other than as designated in the retail licensee's application, unless the retail licensee first applies for and receives approval from the department for a change of location within the licensed premises.

(4) A liquor storage area shall remain locked at all times other than those hours and days when liquor sales are authorized by law.

Section 12. Section **32B-5-308 (Effective 07/01/11)** is amended to read:

32B-5-308 (Effective 07/01/11). Requirements on staff or others on premises -- Employing a minor.

(1) Staff of a retail licensee, while on duty, may not:

- (a) consume an alcoholic product; or
- (b) be intoxicated.

(2) (a) A retail licensee may not employ a minor to sell, offer for sale, furnish, or dispense an alcoholic product.

(b) Notwithstanding Subsection (2)(a), unless otherwise prohibited in the provisions related to the specific type of retail license, a retail licensee may employ a minor who is at least 16 years of age to enter the sale at a cash register or other sales recording device.

Section 13. Section **32B-6-205 (Effective 07/01/11)** is amended to read:

32B-6-205 (Effective 07/01/11). Specific operational requirements for a full-service restaurant license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a full-service restaurant licensee and staff of the full-service restaurant licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action

in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a full-service restaurant licensee;

(ii) individual staff of a full-service restaurant licensee; or

(iii) both a full-service restaurant licensee and staff of the full-service restaurant

licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a full-service restaurant licensee shall display in a prominent place in the restaurant a list of the types and brand names of liquor being furnished through the full-service restaurant licensee's calibrated metered dispensing system.

(3) In addition to complying with Section 32B-5-303, a full-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).

(4) (a) An individual who serves an alcoholic product in a full-service restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of an alcoholic product ordered or consumed.

(5) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a full-service restaurant licensee.

(6) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish liquor at the licensed premises on any day during the period that:

(i) begins at midnight; and

(ii) ends at 11:59 a.m.

(b) A full-service restaurant licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer.

(7) A full-service restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include:

(a) mix for an alcoholic product; or

(b) a service charge.

(8) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except in connection with an order for food prepared, sold, and furnished at the licensed premises.

(b) A full-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) (a) Subject to the other provisions of this Subsection (9), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have more than one spirituous liquor drink at a time before the patron.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection (9)(a).

(10) A patron may consume an alcoholic product only:

(a) at:

(i) the patron's table;

(ii) a counter; or

(iii) a seating grandfathered bar structure; and

(b) where food is served.

(11) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar structure that is not a seating grandfathered bar structure.

(b) At a seating grandfathered bar structure a patron who is 21 years of age or older may:

(i) sit;

(ii) be furnished an alcoholic product; and

(iii) consume an alcoholic product.

(c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure a full-service restaurant licensee may not permit a minor to, and a minor may not:

(i) sit; or

(ii) consume food or beverages.

(d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed by a full-service restaurant licensee:

(A) as provided in Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services during an hour when the full-service restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a seating grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a full-service restaurant licensee's premises in which the minor is permitted to be.

(12) Except as provided in Subsection 32B-5-307(3), a full-service restaurant licensee may dispense an alcoholic product only if:

(a) the alcoholic product is dispensed from:

(i) a grandfathered bar structure;

(ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at the grandfathered bar structure if that area is used to dispense an alcoholic product as of May 12, 2009; or

(iii) an area that is:

(A) separated from an area for the consumption of food by a patron by a solid, opaque, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are:

(I) not readily visible to a patron; and

(II) not accessible by a patron; and

(B) apart from an area used:

(I) for dining;

(II) for staging; or

(III) as a lobby or waiting area;

(b) the full-service restaurant licensee uses an alcoholic product that is:

(i) stored in an area described in Subsection (12)(a); or

(ii) in an area not described in Subsection (12)(a) on the licensed premises and:

(A) immediately before the alcoholic product is dispensed it is in an unopened package;

(B) the unopened package is taken to an area described in Subsection (12)(a) before it is opened; and

(C) once opened, the package is stored in an area described in Subsection (12)(a); and

(c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (12)(a).

(13) A full-service restaurant licensee may state in a food or alcoholic product menu a

charge or fee made in connection with the sale, service, or consumption of liquor including:

- (a) a set-up charge;
- (b) a service charge; or
- (c) a chilling fee.

Section 14. Section **32B-6-305 (Effective 07/01/11)** is amended to read:

32B-6-305 (Effective 07/01/11). Specific operational requirements for a limited-service restaurant license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a limited-service restaurant licensee and staff of the limited-service restaurant licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a limited-service restaurant licensee;
- (ii) individual staff of a limited-service restaurant licensee; or
- (iii) both a limited-service restaurant licensee and staff of the limited-service restaurant licensee.

(2) (a) A limited-service restaurant licensee on the licensed premises may not sell, offer for sale, furnish, or allow consumption of:

- (i) spirituous liquor; or
- (ii) a flavored malt beverage.

(b) A product listed in Subsection (2)(a) may not be on the premises of a limited-service restaurant licensee except for use:

- (i) as a flavoring on a dessert; and
- (ii) in the preparation of a flaming food dish, drink, or dessert.

(3) In addition to complying with Section 32B-5-303, a limited-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).

(4) (a) An individual who serves an alcoholic product in a limited-service restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of an alcoholic product ordered or consumed.

(5) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a limited-service restaurant licensee.

(6) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish wine or heavy beer at the licensed premises on any day during the period that:

(i) begins at midnight; and

(ii) ends at 11:59 a.m.

(b) A limited-service restaurant licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-premise Beer Retailer License, for an on-premise beer retailer.

(7) A limited-service restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include a service charge.

(8) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except in connection with an order for food prepared, sold, and furnished at the licensed premises.

(b) A limited-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) (a) Subject to the other provisions of this Subsection (9), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) An individual portion of wine is considered to be one alcoholic product under Subsection (9)(a).

(10) A patron may consume an alcoholic product only:

(a) at:

(i) the patron's table;

(ii) a counter; or

(iii) a seating grandfathered bar structure; and

(b) where food is served.

(11) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar structure that is not a seating grandfathered bar structure.

(b) At a seating grandfathered bar structure a patron who is 21 years of age or older may:

(i) sit;

683 (ii) be furnished an alcoholic product; and
684 (iii) consume an alcoholic product.

685 (c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure a
686 limited-service restaurant licensee may not permit a minor to, and a minor may not:

687 (i) sit; or
688 (ii) consume food or beverages.

689 (d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed
690 by a limited-service restaurant licensee:

691 (A) as provided in Subsection 32B-5-308(2); or
692 (B) to perform maintenance and cleaning services during an hour when the
693 limited-service restaurant licensee is not open for business.

694 (ii) A minor may momentarily pass by a seating grandfathered bar structure without
695 remaining or sitting at the bar structure en route to an area of a limited-service restaurant
696 licensee's premises in which the minor is permitted to be.

697 (12) Except as provided in Subsection 32B-5-307(3), a limited-service restaurant
698 licensee may dispense an alcoholic product only if:

699 (a) the alcoholic product is dispensed from:

700 (i) a grandfathered bar structure;
701 (ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at
702 the grandfathered bar structure if that area is used to dispense an alcoholic product as of May
703 12, 2009; or

704 (iii) an area that is:

705 (A) separated from an area for the consumption of food by a patron by a solid, opaque,
706 permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic
707 product are:

708 (I) not readily visible to a patron; and
709 (II) not accessible by a patron; and
710 (B) apart from an area used:

711 (I) for dining;
712 (II) for staging; or
713 (III) as a lobby or waiting area;

714 (b) the limited-service restaurant licensee uses an alcoholic product that is:
715 (i) stored in an area described in Subsection (12)(a); or
716 (ii) in an area not described in Subsection (12)(a) on the licensed premises and:
717 (A) immediately before the alcoholic product is dispensed it is in an unopened
718 package;
719 (B) the unopened package is taken to an area described in Subsection (12)(a) before it
720 is opened; and
721 (C) once opened, the package is stored in an area described in Subsection (12)(a); and
722 (c) any instrument or equipment used to dispense alcoholic product is located in an
723 area described in Subsection (12)(a).

724 (13) A limited-service restaurant licensee may state in a food or alcoholic product
725 menu a charge or fee made in connection with the sale, service, or consumption of wine or
726 heavy beer including:

727 (a) a set-up charge;
728 (b) a service charge; or
729 (c) a chilling fee.

730 Section 15. Section **32B-6-405 (Effective 07/01/11)** is amended to read:

731 **32B-6-405 (Effective 07/01/11). Specific licensing requirements for club license.**

732 (1) To obtain a club license, in addition to complying with Chapter 5, Part 2, Retail
733 Licensing Process, a person shall submit with the written application:

734 (a) (i) a statement as to whether the person is seeking to qualify as:

735 (A) an equity club licensee;
736 (B) a fraternal club licensee;
737 (C) a dining club licensee; or
738 (D) a social club licensee; and

739 (ii) evidence that the person meets the requirements for the type of club license for
740 which the person is applying;

741 (b) evidence that the person operates club premises where a variety of food is prepared
742 and served in connection with dining accommodations; and

743 (c) if the person is applying for an equity club license or fraternal club license, a copy
744 of the club's bylaws or house rules, and an amendment to those records.

(2) The commission may refuse to issue a club license to a person for an equity club license or fraternal club license if the commission determines that a provision of the person's bylaws or house rules, or amendments to those records is not:

(a) reasonable; and

(b) consistent with:

(i) the declared nature and purpose of the club licensee; and

(ii) the purposes of this part.

(3) (a) A club license expires on June 30 of each year.

(b) To renew a club license, a person shall comply with the requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than May 31.

(4) (a) The nonrefundable application fee for a club license is \$250.

(b) The initial license fee for a club license is \$2,500.

(c) The renewal fee for a club license is \$1,600.

(5) The bond amount required for a [~~full-service restaurant~~] club license is the penal sum of \$10,000.

Section 16. Section **32B-9-302 (Effective 07/01/11)** is amended to read:

32B-9-302 (Effective 07/01/11). Definitions.

As used in this [~~chapter~~] part:

(1) "120 hour single event permit" means a single event permit that authorizes under this part the storage, sale, offering for sale, furnishing, and consumption of liquor for a period not to exceed 120 consecutive hours.

(2) "72 hour single event permit" means a single event permit that authorizes under this part the storage, sale, offering for sale, furnishing, and consumption of liquor for a period not to exceed 72 consecutive hours.

(3) "Single event permit" means:

(a) a 120 hour single event permit; and

(b) a 72 hour single event permit.

Section 17. **Effective date.**

This bill takes effect on July 1, 2011.